



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

APR 23 2015

Boott Mill Developer LLC

Attn: Gilbert Winn as Executive V.P. for

Boott II Winn LLC, Manager, Boott Mill Developer LLC

Six Faneuil Hall Marketplace

Boston, Massachusetts 02109

Waterfront Lofts at Boott Mills Condominium Trust

c/o Jon Rudzinski, Trustee

130 John Street

Lowell, Massachusetts 01852

Re: PCB Risk-Based Disposal Approval under 40 CFR § 761.61(c)

Boott Mills

Lowell, Massachusetts

MassDEP RTN: 3-26688

Dear Messrs. Winn and Rudzinski:

This is in response to the Notification¹ by Boott Mill Developer LLC ("BMD") for approval of a PCB risk-based disposal plan under 40 CFR § 761.61(c) to address PCB contamination on the property located at 130 Foot of John Street in Lowell, Massachusetts. Specifically, PCB concentrations in soil within the eastern exterior courtyard (hereinafter the "Site") exceed the PCB level for unrestricted use under the federal PCB regulations at 40 CFR § 761.61(a).

BMD has proposed the following plan to address PCB-contaminated soils at the Site that includes the following activities:

¹ Information was submitted by Goldman Environmental Consultants, Inc. on behalf of BMD to support a risk-based disposal approach for PCB remediation waste under 40 CFR § 761.61(c). Information was provided dated August 2, 2012 (Notification of Self-Implementing Cleanup of PCBs); August 27, 2013 (Release Abatement Measure (RAM) Plan Modification Report and Application for Risk-Based Cleanup of PCBs); December 20, 2013 (Response to EPA's Comment Letter dated October 22, 2013); September 10, 2014 (Revised RAM Modification Report and Application for Risk-Based Cleanup of PCBs); March 4, 2015 (Response to EPA Comments on January 26 to 28, 2015); March 31, 2015 (email clarification on property ownership); April 2, 2015 (email clarification on property ownership); and April 15, 2015 (email Public Notice to Resident). These submissions will be referred to as the "Notification."

- ✓ Remove greater than or equal to (" \geq ") 50 parts per million ("ppm") PCB-contaminated soils and overlying asphalt/gravel from three identified PCB hot spot areas to achieve a less than (" $<$ ") 50 ppm PCB cleanup standard for individual soil samples within the hot spots and a less than or equal to (" \leq ") 10 ppm PCB exposure point concentration (based on the 95th upper confidence limit on the mean concentration) for each hot spot area;
- ✓ Conduct verification sampling in accordance with 40 CFR Part 761, Subpart O following removal of the \geq 50 ppm PCB-contaminated soils and asphalt/gravel to confirm that the PCB cleanup standards have been met and if not, conduct additional soil excavation to achieve the required PCB cleanup standards;
- ✓ Remove 12 inches of soils and associated asphalt/gravel from the remaining eastern exterior courtyard area and dispose as a less than (" $<$ ") 50 ppm PCB waste in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(ii);
- ✓ Construct a compliant cap over the entire eastern exterior courtyard in accordance with 40 CFR § 761.61(a)(7);
- ✓ Dispose of PCB-contaminated soils with \geq 50 ppm in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii); and,
- ✓ Record a deed notice in the form of an Activity and Use Limitation ("AUL") to document Site conditions, establish use restrictions, and identify obligations and conditions which must be maintained to ensure that the PCBs and other contaminants remaining at the Site and on the property pose no unreasonable risk to property users.

As indicated in the Notification, Waterfront Lofts at Boott Mills Condominium Trust is the property owner and as such shall be responsible for recording the AUL and maintaining the cap.

Based on EPA's review, EPA has determined that the proposed plan is acceptable and that the PCBs remaining at the Site following the proposed work will not pose an unreasonable risk of injury to health or the environment. The compliant cap will prevent direct exposure to Site contaminants and will be maintained with a long-term inspection and maintenance plan. EPA applies this reasonable risk standard in accordance with the PCB regulations at 40 CFR § 761.61(c), and the Toxic Substances Control Act at 15 USC § 2605(e).

BMD and Condominium Trust may proceed with the project in accordance with 40 CFR § 761.61(c); the Notification; and, this Approval, subject to the conditions of Attachment 1. As indicated in the Notification, BMD will provide written notice to building occupants and users of the PCB remedial activities, the schedule and the dust monitoring that will occur during the remedial work.

This Approval may be revoked, suspended and/or modified as described in Attachment 1, or if the EPA determines that implementation of this Approval may pose an unreasonable risk of injury to health or the environment, or if there is a change in the Site use.

Nothing in this Approval is intended or is to be construed to prejudice any right or remedy concerning PCBs or other federally-regulated contaminants at the Site otherwise available to the EPA under Section 6 of TSCA, 15 U.S.C. 2605, 40 CFR Part 761, or other provisions of federal law.

This Approval does not release BMD or Condominium Trust from any applicable requirements of federal, state or local law, including the requirements related to cleanup and disposal of PCBs or other contaminants under the Massachusetts Department of Environmental Protection ("MassDEP") regulations.

Questions and correspondence regarding this Approval should be directed to:

Kimberly N. Tisa, PCB Coordinator
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code: OSRR07-2
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1527
Facsimile: (617) 918-0527

EPA shall consider this project complete only when it has received documents evidencing construction of the physical controls (i.e., cap), establishment of financial assurance for cap monitoring and maintenance, and, adoption of the deed restriction (i.e., AUL). Please be aware that upon EPA receipt and review of the submittals, EPA may request any additional information necessary to establish that the work has been completed in accordance with 40 CFR Part 761, the Notification, and this Approval.

Sincerely,



Nancy Barmakian, Acting Director
Office of Site Remediation & Restoration

Attachment 1: Approval Conditions

cc: Brian Butler, GEC
MassDEP RTN: 3-26688
City of Lowell Board of Health
File

ATTACHMENT 1

**PCB RISK-BASED DISPOSAL APPROVAL CONDITIONS
BOOTT MILLS – EASTERN EXTERIOR COURTYARD
130 FOOT OF JOHN STREET (the “Property”)
LOWELL, MASSACHUSETTS**

GENERAL CONDITIONS

1. This Approval is granted under the authority of Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605(e), and the PCB regulations at 40 CFR Part 761, and applies solely to *PCB remediation waste* identified in the Notification¹ and located within the eastern exterior courtyard (hereinafter the “Site”) on the Property.
 - a. In the event that Boott Mill Developer LLC (“BMD”) or the Waterfront Lofts at Boott Mills Condominium Trust (the “Condominium Trust” or the “Site Owner”) identifies other PCB-contaminated wastes (i.e., PCBs not identified in the Notification) subject to cleanup and disposal under the PCB regulations, BMD and/or the Condominium Trust will be required to notify EPA and clean up the PCB-contaminated wastes in accordance with 40 CFR Part 761.
 - b. BMD or the Condominium Trust may submit a separate plan to address other PCB-contaminated wastes or may request to modify the Notification to incorporate cleanup of the PCBs under this Approval in accordance with Condition 27.
2. This Approval shall expire 10 years from the date of signature, unless extended, renewed, suspended, modified, revoked, or terminated in accordance with the conditions stated herein.
3. Application for renewal or extension of this Approval shall be made in writing at least 180 days, but not more than 270 days, prior to the expiration date. Application for renewal must include information to demonstrate that the institutional and engineered controls remain effective in mitigating risks from PCBs and that the Condominium Trust (or a subsequent owner of the property subject to the terms of this Approval) has met and will continue to meet all conditions of this Approval. In reviewing the application for renewal, EPA will consider whether Site controls are effective, if additional measures are necessary to ensure no unreasonable risk of injury to health or the environment, and whether Approval conditions have been met. EPA may require the submission of additional information in connection with any renewal application.

¹ Information was submitted by Goldman Environmental Consultants, Inc. on behalf of BMD to support a risk-based disposal approach for *PCB remediation waste* under 40 CFR § 761.61(c). Information was provided dated August 2, 2012 (Notification of Self-Implementing Cleanup of PCBs); August 27, 2013 (Release Abatement Measure (RAM) Plan Modification Report and Application for Risk-Based Cleanup of PCBs); December 20, 2013 (Response to EPA’s Comment Letter dated October 22, 2013); September 10, 2014 (Revised RAM Modification Report and Application for Risk-Based Cleanup of PCBs); March 4, 2015 (Response to EPA Comments on January 26 to 28, 2015); March 31, 2015 (email clarification on property ownership); April 2, 2015 (email clarification on property ownership); and April 15, 2015 (email Public Notice to Resident). These submissions will be referred to as the “Notification.”

4. BMD shall conduct on-site activities in accordance with the conditions of this Approval and with the Notification.
5. In the event that the activities described in the Notification differ from the conditions specified in this Approval, the conditions of this Approval shall govern.
6. The terms and abbreviations used herein shall have the meanings as defined in 40 CFR § 761.3 unless otherwise defined within this Approval.
7. BMD must comply with all applicable federal, state and local regulations in the storage, handling, and disposal of all PCB wastes, including PCBs, PCB Items and decontamination wastes generated under this Approval.
8. BMD is responsible for the actions of all officers, employees, agents, contractors, subcontractors, and others who are/were involved in activities conducted under this Approval. If at any time BMD or the Condominium Trust has or receives information indicating that BMD or any other person has failed, or may have failed, to comply with any provision of this Approval, it must report the information to EPA in writing within 24 hours of having or receiving the information.
9. This Approval does not constitute a determination by EPA that the transporters or disposal facilities selected by BMD are/were authorized to conduct the activities set forth in the Notification. BMD is responsible for ensuring that its selected transporters and disposal facilities are/were authorized to conduct these activities in accordance with all applicable federal, state and local statutes and regulations.
10. This Approval does not: a) waive or compromise EPA's enforcement and regulatory authority; b) release BMD or the Condominium Trust from compliance with any applicable requirements of federal, state or local law; or c) release BMD or the Condominium Trust from liability for, or otherwise resolve, any violations of federal, state or local law.
11. Failure to comply with the Approval conditions specified herein shall constitute a violation of the requirement in 40 CFR § 761.50(a) to store or dispose of PCB waste in accordance with 40 CFR Part 761, Subpart D.

NOTIFICATION AND CERTIFICATION CONDITIONS

12. This Approval may be revoked if the EPA does not receive written notification from BMD and the Condominium Trust of their acceptance of the conditions of this Approval within 10 business days of receipt.
13. BMD shall notify EPA in writing of the scheduled date of commencement of on-site activities at least one business day prior to conducting any work under this Approval.

14. Prior to initiating onsite work under this Approval, BMD shall submit the following information:
 - a. a certification signed by the selected analytical laboratory, stating that the laboratory has read and understands the analytical and quality assurance requirements specified in the Notification and in this Approval;
 - b. a contractor work plan prepared and submitted by the selected contractor(s), detailing the procedures that will be employed for removal and capping of PCB-contaminated soils. The work plan should include information on waste storage, handling, and disposal of generated PCB waste and for equipment decontamination; and,
 - c. a certification signed by its selected remediation contractor, stating that the contractor has read and understands the Notification, and agrees to abide by the conditions specified in this Approval.

CLEANUP AND DISPOSAL CONDITIONS

15. *PCB remediation waste* (i.e., soil and asphalt/gravel) with greater than or equal to (" \geq ") 50 parts per million ("ppm") and located within the three "hot spot" areas shall be removed and disposed off-site in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii).
 - a. *PCB remediation waste* samples shall be collected on a bulk basis (i.e., mg/Kg) and reported on a dry-weight basis. Post-excavation soil verification sampling shall be conducted in accordance with 40 CFR Part 761 Subpart O to confirm that the PCB cleanup standards of less than (" $<$ ") 50 ppm and < 10 ppm (based on the 95th percentile upper confidence limit on the mean) have been met for each excavation area. Samples shall be collected from both excavation bottoms and sidewalls, as applicable.
 - b. Chemical extraction for PCBs shall be conducted using Methods 3500B/3540C of SW-846 for solid matrices and Method 3500B/3510C of SW-846 for aqueous matrices; and, chemical analysis for PCBs shall be conducted using Method 8082 of SW-846, unless another extraction and/or analytical method(s) is validated according to Subpart Q.
16. A minimum of 12 inches of asphalt/gravel and soil located outside the three "hot spot" areas and which contain PCBs at < 50 ppm shall be removed and disposed of off-site in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(ii) or § 761.61(a)(5)(i)(B)(2)(iii).
17. Following completion of soil and asphalt/gravel removal and attainment of PCB cleanup standards, BMD shall construct a compliant cap over the entire eastern exterior courtyard area in accordance with 40 CFR § 761.61(a)(7).

18. All PCB waste (regardless of concentration) generated as a result of the activities described in the Notification, excluding any decontaminated materials, shall be marked in accordance with 40 CFR § 761.40; stored in a manner prescribed in 40 CFR § 761.65; and, disposed of in accordance with 40 CFR § 761.61(a)(5), unless otherwise specified below:
- a. Non-liquid cleaning materials, such as PPE and similar materials resulting from decontamination, shall be disposed of in accordance with 40 CFR § 761.79(g)(6).
 - b. Moveable equipment, tools, and sampling equipment shall be decontaminated in accordance with either 40 CFR § 761.79(b)(3)(i)(A), § 761.79(b)(3)(ii)(A), or § 761.79(c)(2).
 - c. PCB-contaminated water generated during decontamination or dewatering shall be decontaminated in accordance with 40 CFR § 761.79(b)(1) or disposed of under 40 CFR § 761.70.

DEED RESTRICTION AND USE CONDITIONS

19. Within 30 days of completing the activities described in the Notification and authorized in the Approval, BMD or the Condominium Trust shall submit for EPA review and approval, a draft deed restriction for the Site. The deed restriction shall include: a description of the extent and levels of contamination at the Site following remediation; a description of the actions taken at the Site; a description of the use restrictions and conditions for the Site; and, the long-term monitoring and maintenance requirements for the cap which may be addressed by the long-term monitoring and maintenance plan (see Condition 24). The deed restriction shall be recorded by the Site Owner within seven business days of receipt of EPA's approval of the draft deed restriction. A copy of this Approval shall be attached to the deed restriction.
20. The Site Owner shall notify the EPA of the sale, lease or grant of any real estate interest in the Site, in writing, no later than 60 days prior to such action. This notification shall include the name, address, and telephone number of the new owner(s). In the event that the Site Owner sells, leases, or grants any real estate interest affecting a portion of the Site, the Site Owner shall continue to be bound by all the terms and conditions of this Approval, unless EPA allocates some or all of this Approval's responsibilities to the new owner(s), lessee or grantee. The notification procedures are as follows:
- a. The new owner(s), lessee or grantee must request, in writing, that the EPA transfer some or all obligations and responsibilities under the Approval to the new owner(s), lessee or grantee;

- b. The EPA reviews the request, and determines whether to allocate some or all of the obligations and responsibilities under the Approval to the new owner(s), lessee, or grantee; and,
 - c. The new owner(s), lessee or grantee provides written notification to the EPA of its acceptance of and intention to comply with the terms and conditions of the Approval or new approval, should EPA deem a new approval is necessary. The Approval or new approval may be withdrawn if the EPA does not receive written notification from the new owner(s), lessee or grantee of its acceptance of, and intention to comply with, the terms and conditions of the Approval or new approval within 30 days of its receipt of the Approval or the new approval. Under such circumstances, all terms and conditions of this Approval will continue to be binding on the Site Owner.
21. In the event that the sale, lease or grant of a real estate interest in the Site will involve or result in a change in the use of the Site, EPA may revoke, suspend, and/or modify this Approval or the new approval if it finds, due to the change in use, that this risk-based disposal action will pose an unreasonable risk of injury to health or the environment. The new owner or grantee shall record any amendment to the deed restriction, resulting from any approved modification(s), within 60 days of such change(s).
22. In any sale, lease or grant of a real estate interest in the Site, the Site Owner shall retain sufficient access rights to enable it to continue to meet its obligations under this Approval, except as provided above.
23. Conditions 20 through 22 shall not apply to real estate transactions involving individual residential apartments or commercial units.

INSPECTION, MONITORING, MODIFICATION AND REVOCATION CONDITIONS

24. Within 30 days of completion of work authorized under this Approval, BMD or the Condominium Trust shall submit for EPA's review and approval, a detailed long-term monitoring and maintenance plan ("MMP") for the Site cap. BMD shall incorporate any changes to the MMP required by EPA.
- a. The MMP shall include: a description of the activities that will be conducted, including inspection criteria, frequency, and routine maintenance activities; sampling protocols, sampling frequency, and analytical criteria; and reporting requirements.
 - b. The MMP shall include a communications component which details how the maintenance and monitoring results will be communicated to the building occupants/users and other interested stakeholders.

- c. The MMP also shall include a worker training component for maintenance workers or for any person that will be conducting work that could impact the Site cap.
 - d. The results of these long-term monitoring and maintenance activities shall be submitted to EPA. Based on its review of the results, EPA may determine that modification to the MMP is necessary in order to monitor and/or maintain the effectiveness of the cap.
 - e. Activities required under the MMP shall be conducted until such time that EPA determines, in writing, that such activities are no longer necessary.
25. Within 30 days of completion of work authorized under this Approval, BMD or the Condominium Trust shall submit for EPA's review and approval, the proposed financial assurance mechanism(s) for the long-term care of the Site cap consistent with 40 CFR §§ 264.144 and 264.145. BMD and/or the Condominium Trust shall incorporate any changes to the financial assurance mechanism(s) as required by EPA.
26. Within 30 days of receipt of EPA's approval of the MMP and financial assurance mechanism(s), BMD or the Condominium Trust shall submit to EPA the final MMP and provide written documentation of establishment of the financial assurance mechanism(s).
27. Any modification(s) in the plan, specifications, or information submitted by BMD and/or the Condominium Trust, contained in the Notification, and forming the basis upon which this Approval has been issued, must receive prior written approval from the EPA. BMD and/or the Condominium Trust shall inform the EPA of any modification, in writing, at least 10 days prior to such change. No action may be taken to implement any such modification unless the EPA has approved of the modification, in writing. The EPA may request additional information in order to determine whether to approve the modification.
28. If a modification involves a change in the use of the Site which results in exposures not considered in the Notification, the EPA may revoke, suspend, and/or modify this Approval upon finding that this risk-based disposal action may pose an unreasonable risk of injury to health or the environment due to the change in use. EPA may take similar action if the EPA does not receive requested information needed from BMD and/or the Condominium Trust to make a determination regarding potential risk.
29. Any departure from the conditions of this Approval without prior, written authorization from the EPA may result in the revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.
30. Any misrepresentation or omission of any material fact in the Notification or in any future records or reports may result in the EPA's revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.

31. Approval for these activities may be revoked, modified or otherwise altered: if EPA finds a violation of the conditions of this Approval or of 40 CFR Part 761, including EPA's PCB Spill Cleanup Policy, or other applicable rules and regulations; if EPA finds that these activities pose an unreasonable risk of injury to health or the environment; if EPA finds that there is migration of PCBs from the Site; or if EPA finds that changes are necessary to comply with new rules, standards, or guidance for such approvals. BMD may apply for appropriate modifications in the event new rules, standards, or guidance come into effect.
32. BMD and/or the Condominium Trust shall allow any authorized representative of the Administrator of the EPA to inspect the Site and to inspect records and take samples as may be necessary to determine compliance with the PCB regulations and this Approval. Any refusal by BMD or the Condominium Trust to allow such an inspection (as authorized by Section 11 of TSCA) shall be grounds for revocation of this Approval.

RECORDKEEPING AND REPORTING CONDITIONS

33. BMD shall prepare and maintain all records and documents required by 40 CFR Part 761, including, but not limited to, the records required by Subparts J and K, and shall submit same to the Condominium Trust. BMD and/or the Condominium Trust shall maintain a written record of the PCB remediation and the analytical sampling for activities conducted under this Approval. All records shall be made available for inspection by authorized representatives of the EPA, until such time as EPA approves in writing a request for an alternative disposition of such records.
34. BMD and/or the Condominium Trust shall submit a Final Completion Report ("Report") in both hard and electronic formats (CD-ROM) to the EPA within 120 days of completion of the activities described under this Approval. At a minimum, this Report shall include:
 - a) a discussion of the project activities with photo-documentation; documentation of cap construction; characterization and verification sampling analytical results with figures showing sampling locations; copies of the accompanying analytical chains of custody; field and laboratory quality control/quality assurance checks; an estimate of the quantity of PCBs removed and disposed off-site; copies of manifests and/or bills of lading or equivalent; and, copies of certificates of disposal or similar certifications issued by the disposer;
 - b) a certification signed by BMD and/or the Condominium Trust verifying that the authorized activities have been implemented in accordance with this Approval and the Notification; and,

- c) the signed certification required under 40 CFR § 761.61(a)(8)(i)(B) that the deed restriction (e.g., Activity and Use Limitation or "AUL") has been recorded as required under 40 CFR § 761.61(a)(8)(i)(A). A copy of the executed deed restriction must also be submitted.

35. Required submittals shall be mailed to:

Kimberly N. Tisa, PCB Coordinator
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code: OSRR07-2
Boston, Massachusetts 02109-3912

36. No record, report or communication required under this Approval shall qualify as a self-audit or voluntary disclosure under EPA audit, self disclosure or penalty policies.

END OF ATTACHMENT 1